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June 30, 1995

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CS Docket No. 95-61
Annual Assessment of the Status in the Market for the Delivery of Video Programming

Dear Mr. Caton:

On behalf of Group W Satellite Communications, a venture of Westinghouse Electric Corporation and its Westinghouse Broadcasting Company division, enclosed herewith for filing with the Commission are an original and four copies of *Comments of Group W Satellite Communications.*, filed in response to the Commission's *Notice of Inquiry* in the above referenced proceeding, pursuant to the Commission's rules and policies.

Should there be any questions in connection with these comments, please contact the undersigned.

Respectfully submitted,

Stephen A. Hildebrandt
Chief Counsel

Encl.

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C 20554

In the Matter of:	)	
	)	
Annual Assessment of the Status in the	)	CS Docket No. 95-61
Market for the Delivery of Video	)	
Programming	)	

COMMENTS OF GROUP W SATELLITE COMMUNICATIONS

Group W Satellite Communications
250 Harbor Drive
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Mark Melnick, Esq.
Stephen A. Hildebrandt, Esq.

For itself and on behalf of
Gaylord Entertainment Company

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COMMENTS OF
GROUP W SATELLITE COMMUNICATIONS

Group W Satellite Communications ("GWSC"), a venture of Westinghouse Electric Corporation ("Westinghouse") and its Westinghouse Broadcasting Company division, by its attorneys, hereby files Comments in the above-referenced proceeding. Since 1983, GWSC has been engaged in the businesses of distributing television program services via cable systems and other non-broadcast means, and providing satellite transmission and other television-related technical services.

Currently, the television program services distributed by GWSC include The Nashville Network ("TNN") and Country Music Television ("CMT"). TNN is wholly-owned by Gaylord Entertainment Company ("Gaylord") and CMT is owned by Gaylord and Westinghouse.[1]

These Comments are filed in response to the Commission's Notice of Inquiry dated May 4, 1995 (the "NOI"), relating to the Commission's Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming. In particular, this filing responds to Paragraph 90(h) of the NOI, in which the FCC requests comments on the question, "Should the program access rules [of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act")] be extended to non-vertically integrated program providers?" GWSC's answer to this question is an emphatic NO!

There is no public policy reason to force new regulations on the programming marketplace when there is no evidence of unfair discrimination by programmers in selling to different market segments. Furthermore, there is no incentive for independent programmers such as TNN and CMT to discriminate and thereby limit their distribution in a market where maximum distribution is everything.

[1] TNN and CMT are currently vertically integrated satellite cable program services, but it is expected that they will become non-vertically integrated prior to the end of 1995. Gaylord expects to close the divestiture of its direct and indirect cable system holdings in late 1995. Westinghouse currently has no direct or indirect cable system holdings.

THE PROGRAM ACCESS RULES OF THE 1992 CABLE ACT SHOULD NOT BE EXTENDED TO NON-VERTICALLY INTEGRATED PROGRAM PROVIDERS

The program access provisions of the 1992 Cable Act prohibit vertically integrated satellite cable programming vendors from engaging in unfair methods of competition or unfair or deceptive acts or practices the purpose or effect of which is to prevent or significantly hinder program distribution.[2] There are three reasons why this rule should not be extended to non-vertically integrated programmers:

1. **There Has Been No Showing That Non-Vertically Integrated Programmers Limit Program Distribution.** The simplest reason why this rule should not be extended is that there has been no showing of why it should be. The burden rests on those who would impose government regulation on an existing commercial activity. That burden is to demonstrate with clear evidence that (a) a problem of public dimension exists and (b) government regulation will eliminate that problem. In this instance, there has been no Congressional finding of a need to regulate non-vertically integrated programmers and no demonstration that non-vertically integrated programmers have engaged or are likely to engage in unfair or deceptive acts, let alone any the purpose or effect of which is to prevent or significantly hinder program distribution. Both the FCC and the Congress are on the record for favoring less regulation, getting rid of unnecessary current regulation and letting

[2] 1992 Cable Act §19, 47 U.S.C. §548. *See also* 47 C.F.R. § 76.1001 *et seq.*

competitive marketplaces function. In an industry in which many question the extent of current regulation, expansion of the reach of government in the absence of a particular showing is unwarranted.

2. **There Is No Incentive for Non-Vertically Integrated Programmers to Limit Distribution**. Congress adopted the program access restrictions on vertically integrated cable programmers because it concluded that a cable operator's interest in a cable programmer would likely influence that programmer to grant terms of carriage to cable operators that are more favorable than those granted to other multichannel video programming distributors. Without vertical integration, the rationale for regulation does not exist. Cable programmers with no cable operator attributable interest simply have no reason to limit non-cable distribution and the revenue stream such distribution represents.[3]

3. **Legitimate Business Reasons for Varying Terms Exist and Are Governed By the Marketplace**. The 1992 Cable Act and the FCC in its regulations thereunder have recognized that there are legitimate bases for differences in license fees and other carriage terms in program supply agreements with cable operators and non-

[3] Some have questioned why the program access provisions apply only to vertically integrated satellite *cable* programming services if they apply to all satellite *broadcast* programming services. See *id; see also* Implementation of §§12 and 19 of the Cable Television Consumer Protection and Competition Act, MM Docket No. 92-265 (FCC 93-178 April 1, 1993) ("Program Access Order"), ¶ 29. The reason is that satellite cable programming vendors (unlike satellite broadcast programming vendors) establish license fees on their own, without reference to the Copyright Act's compulsory licensing provisions. Hence only they were believed to be subject to "the conflicting incentives" of vertical integration. *See* Program Access Order at ¶ 35.

cable distributors, respectively.[4] TNN and CMT believe that non-cable distributors underestimate the importance of these legitimate differences. The fact is that extending the program access rules to non-vertically integrated cable programmers will increase the administrative burdens of doing business for such programmers without materially altering the extent of license fee and other carriage term differentiation in such programmers' non-cable transactions.

For all of the reasons set forth above, the program access rules of the 1992 Cable Act should *not* be extended to non-vertically integrated program providers.

Respectfully submitted,

GROUP W SATELLITE COMMUNICATIONS,
for itself and on behalf of
Gaylord Entertainment Company

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June 30, 1995

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[4] *See* 1992 Cable Act §19(c)(ii)(B)(i)-(iv), 47 U.S.C. §548(c)(ii)(B)(i)-(iv); 47 C.F.R. §76.1002(b)(1)-(4).